RULES
OF
DEPARTMENT OF REVENUE
MISCELLANEOUS TAX DIVISION

CHAPTER 1320-4-6
LOCAL OPTION LIQUOR RULES

TABLE OF CONTENTS

1320-4-6-.01 IDENTIFICATION STAMPS.

(1) Types of Identification Stamps.

(a) Identification stamps, referred to hereinafter, shall for the purpose or these rules be deemed to be those identification stamps defined in subparagraph (b) and required to be affixed to retail containers of distilled spirits only. Under provisions of T.C.A. §57-3-303(h), it is hereby provided that identification stamps shall not be required to be affixed to retail containers of wine.

(b) For the purposes of these rules, identification stamps shall mean one of the following:

1. *Video Jet/Laser Jet* shall mean a permanent printing or etching of the word TENNESSEE, TENN. or TN. in indelible ink upon each retail container of distilled spirits. Said word TENNESSEE, TENN. or TN. shall appear in capital letters on the surface of the container opposite the manufacturer's label.

2. *Overprint* shall mean a printing of the word TENNESSEE, TENN. or TN. in indelible ink upon the Federal Strip Stamp so that the word TENNESSEE, TENN. or TN. appears on both sides and the top of the Federal Strip Stamp. In the event the Federal Strip Stamp is discontinued the word TENNESSEE, TENN. or TN. will appear on both sides of the neck of the container and on the top of the cap printed in indelible ink on a strip designed (and approved by the Department of Revenue) for this purpose. Provided, however, the printing of the word TENNESSEE, TENN. or TN. may not be required on the cap if the strip is approved by the Department of Revenue.

3. *Decal* shall mean those identification stamps issued by the Department of Revenue upon the written request of a licensed Tennessee wholesaler of alcoholic beverages. One decal shall be affixed to the side of each container which exposes the label containing the brand names, but in no event shall any information carried on the label or the Federal Strip Stamp be covered up by this identification stamp.

(2) Approval and Requisition of Identification Stamps.

(a) Every Tennessee licensed wholesaler of alcoholic beverages who elects to use either the video jet/laser jet or overprint method of affixing identification stamps to containers of distilled spirits, which he has been authorized to distribute by sale or gift within this state, shall request permission from the Department of Revenue for the use of such identification stamps. Such request shall be in writing and contain a statement from the manufacturer to the

wholesaler indicating the type of identification stamp to be used and a sample of the identification stamp. The Commissioner may, in his discretion, approve or disapprove such request.

(b) A Tennessee licensed manufacturer or distiller may likewise elect to use either the video jet/laser jet or overprint method of affixing identification stamps to containers of its own products as may be needed for its own use by requesting approval from the Department of Revenue for the use of such identification stamp. Such request will indicate the type of identification stamp to be used, a sample of the identification stamp and a statement indicating on which of its products said identification stamp will be affixed.

(c) Every Tennessee licensed wholesaler of alcoholic beverages shall be privileged to requisition from the Department of Revenue decals required to be affixed to containers of distilled spirits which he has been authorized to distribute by sale or gift within the state. The request must be in writing and accompanied by purchase orders documenting the amount of decals requested. The Commissioner may, in his discretion, permit the issuance of additional decal upon receipt of such written request.

(d) A Tennessee licensed manufacturer or distiller of distilled spirits shall likewise be privileged to requisition necessary decals to be affixed to containers of its own products as may be needed for its own use in an amount not to exceed one hundred (100) cases per month. Except as hereinafter provided, not more than two thousand (2,000) decals may be requisitioned during any one month to be affixed to a distiller's one hundred (100) case allowance. Should any manufacturer or distiller have need for additional decals during any month, such additional decals may, in the discretion of the Commissioner, be issued upon written request setting out the reason for such increase requirements. Reports shall be filed monthly by such manufacturer or distiller on forms prescribed by the Commissioner of Revenue in which shall be set out the number and disposition of all decals used. Tax due on such products as well as any other alcoholic beverage not of his own manufacturer which he disposes of for his own use shall be indicated in each report and payment thereof shall accompany each such report.

(e) Successful bidders on contraband alcoholic beverages sold by the Department of General Services shall, before taking possession of such beverages, pay the applicable alcoholic beverage tax to the Department of Revenue and in addition shall requisition decals to be affixed to containers of distilled spirits so purchased.

(3) Affixation of Identification Stamps.

(a) It shall be the duty of each wholesaler to affix, or have affixed, one of the above defined identification stamps to each container of distilled spirits before the same shall be sold or offered for distribution, gift or sale; provided, that the decals shall be affixed in every instance within seventy-two (72) hours after receipt of such products by the wholesaler, including merchandise designated for storage in a bonded warehouse; provided further, however, the wholesaler is authorized to appoint a manufacturer or importer as his agent to affix video jet/laser jet or overprint identification stamps to containers of alcoholic beverages requiring such identification stamps before delivery or shipment into this state.

(b) The wholesaler is further authorized to appoint a manufacturer or importer as his agent to affix decals provided by the department and furnished by the wholesaler to containers of alcoholic beverages requiring such decals before delivery or shipment into this state.

(4) Restrictions on Use of Decals.

(Rule 1320-4-6-.01, continued)

(a) Each wholesaler who requisitions decals is required to use all such decals upon distilled spirits purchased and sold by his firm and no wholesaler may exchange, lend or give away any such decals.

(b) Each wholesaler shall be accountable for the decals he requisitions, or receives affixed to merchandise purchased from other wholesalers, and shall maintain accurate records to properly account for each decal from the time of receipt until the decal is affixed to containers of distilled spirits or otherwise disposed of through legitimate channels of trade. The procedure for handling and accounting for decals mutilated, destroyed, lost or, otherwise affixed to merchandise for distribution within the state by licensees shall be as follows:

1. Mutilated but identifiable and unused decals in the hands of the wholesaler shall be returned to the Department of Revenue by the wholesaler before a reduction in decal inventory is allowed.

2. Reduction in decal inventory for decals destroyed or cancelled at a distillery shall be accompanied by affidavit from each of two persons, who must be approved in advance by the Commissioner of Revenue, in which is set out the following:

   (i) the decals were identifiable and were destroyed or cancelled;

   (ii) the date such decals were destroyed or cancelled;

   (iii) the conditions necessitating the destruction or cancellation of decals;

   (iv) the quantity and disposition of such decals destroyed.

3. Reduction in decal inventory for decals affixed to containers of distilled spirits damaged or broken while in transit shall be supported by:

   (i) affidavit from the carrier or person transporting such beverages in which is set out the type of product, the quantity and size of containers, the disposition made of the damaged merchandise, and manner in which identifiable Tennessee decals affixed to damaged or broken merchandise were destroyed or cancelled;

   (ii) evidence of payment, if any, to the wholesaler by common carrier insurance company, or otherwise, for such breakage or loss;

   (iii) affidavit by consignor making such shipment that Tennessee decals had been affixed to the containers prior to shipment and in which quantity.

4. Reduction in decal inventory for decals affixed to containers of distilled spirits which are returned to the distillery, importer or bottler, or are exported by a Tennessee wholesaler shall be allowed only when conditions in rule 1320-4-6.02 (4) (b) are met.

5. Reduction in decal inventory for decals affixed to containers of distilled spirits which have been broken, damaged or deteriorated in the wholesaler's warehouse shall be allowed only when the conditions in rule 0100-3-.15 (3) or rule 1320-4-6-.02 (4) (c) are met.

6. Further reduction in decal inventory shall be allowed when decals have been affixed to merchandise which is located in the place of business of the wholesaler as a part of his stock regularly kept for sale at such place of business and the products, or part thereof,

(Rule 1320-4-6-.01, continued)

or the decals affixed thereto, have been accidentally damaged or destroyed by fire or other acts of nature beyond his control, which renders such products unsalable, provided it can be reasonably determined by the Department of Revenue that a specific loss has occurred.

7. Decal inventory may further be reduced in the discretion of the Commissioner, whether or not affixed to products, when decals have been lost in the course of transmittal to or from a supplier, or when stolen from licensed premises, upon affidavit from the wholesaler in which all known facts are set out.

(c) The Commissioner may, at his discretion, provide a format for use by the wholesaler to insure procedure for accounting for the decals.

Authority: *T.C.A. §§57-3-303, 57-3-307, 57-132, 57-136, 67-101, and 67-1-102.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed January 29, 1985; effective April 16, 1985.*

1320-4-6-.02 TAX LIABILITY.

(1) The tax rates as set out at T.C.A. §57-131 shall, for the purpose of paying tax on alcoholic beverages measured by the metric system of capacity measurement, be as follows:

(a) $.2906 per liter of wine.

(b) $1.0567 per liter of spirits.

(2) Tax liability shall be based upon adjusted gross sales, other than sales or returns to wholesalers and/or suppliers, for the preceding calendar month and payment thereof shall be made on or before the fifteenth (l5th) day following such month.

(3) Adjusted gross sales shall mean total disposition of alcoholic beverages, less the following:

(a) Sales to other wholesalers.

(b) Returns to distillers or other suppliers, or exports authorized by suppliers to other than distillers.

(c) Damaged or deteriorated merchandise which has been destroyed as otherwise provided herein and house breakage on wines and on distilled spirits on which identification stamps remain identifiable and federal strip stamp is intact.

(d) Sales, gifts or distribution of any wine used solely for sacramental purposes.

(e) Beverages accidentally damaged or destroyed on business premises by fire or other acts of nature beyond his control or other accountable losses.

(f) Sales to qualified military installations of the federal government.

(4) Restrictions on classifying adjusted gross sales. The following procedure shall be observed in handling and accounting for tax exempt disposition of alcoholic beverages:

(a) Before tax free sales to other wholesalers may be consummated, the consignor's records must properly indicate sales invoices and the consignee's records must indicate receipt of such merchandise.

(b) Before a wholesaler may be relieved of tax liability for products returned to distillers or other suppliers, or exports authorized by suppliers, it shall be the responsibility of any such wholesaler to furnish the Department of Revenue with:

1. documentary evidence of authorization from the supplier for return or export of the specific products by such wholesaler;

2. a copy of the bill of lading or similar document regarding such products return or export;

3. an affidavit from the person or firm receiving the returned or exported products which includes:

(i) the kind, quality and size or the products received; and

(ii) for distilled spirits, that the identification stamps upon those products have been or will be destroyed or obliterated.

4. documentary evidence from the supplier that credit has been afforded the wholesaler for the products described in "3" above.

The documentation for any returned products or exports for which tax relief is claimed, during any tax reporting month, shall be attached to a tax return and submitted to the Department of Revenue as part of that return. No wholesaler may be relieved of tax liability for any products returned or exported during any month until all required documentation applicable to such returns or exports is attached to a single tax return and received by the Department of Revenue.

(c) Before a wholesaler may be relieved of tax liability for house breakage, it shall be his responsibility to obtain the assistance of one Department of Revenue representative who will observe the broken containers for which exemption is being sought and furnish a certificate stating the quantity and size containers of distilled spirits on which the identification stamp remains identifiable with the federal strip stamp or manufacturer's seal intact, and, with reference to wine, furnish a certificate stating the quantity and size containers on which the crown, cap, seal or cork remain intact and unbroken. Under no conditions may credit be claimed or given for tax applicable to broken containers of distilled spirits when the identification stamp is not identifiable and the federal strip stamp or manufacturer's seal is not intact; nor shall credit be allowed in any instance when the size of the original container cannot be definitely determined. In the event the wholesaler shall have unsalable merchandise to remove from inventory, tax credit may be given only when one Department of Revenue representative witnesses the complete destruction of the contents and the bottles, and makes certification as required herein for other breakage.

(d) Before tax-free sales of wine for sacramental purposes may be made, sales invoices applicable to such sales must be signed by an authorized person designated by a letter from an official of the church or synagogue receiving the wine and such authorized person's signature must be filed at the same time with the Department of Revenue as a matter of record.

(e) Before a wholesaler may be relieved of tax liability for beverages accidentally damaged or destroyed on business premises by fire or other acts of nature beyond his control or other accountable losses, the wholesaler shall be required to furnish documentary evidence by which the Department of Revenue may reasonably determine that a specific loss has occurred.

(Rule 1320-4-6-.02, continued)

(f) Before a wholesaler may be relieved of tax liability for products sold to a fort, base, camp or post of the armed forces of the United States or post exchange, ship-service store, commissary or mess operated by the US. armed forces, the following conditions shall be required:

1. The commanding officer of a qualified military installation has furnished the Commissioner of Revenue a letter designating an officer or civilian employee who possesses managerial authority over the post exchange, ship service store, commissary or mess as a person authorized to sign invoices acknowledging receipt of such products within the military installation with respect to which alcoholic beverages tax credit is being sought and such letter has been signed by the commanding officer. The signature of such designated officer or civilian employee shall be filed at the same time with the Department of Revenue as a matter of record;

2. The officer or civilian employee designated in each instance, as provided in "1" above, has signed each invoice acknowledging receipt of the products and also signed a certificate as prescribed by the Commissioner of Revenue summarizing all receipts of such products during a given month and certifying that the products were sold to, and delivered to a post exchange, ship-service store, commissary, mess or other such exempt agency, by a Tennessee wholesaler and that said products will be sold by such instrumentality of the government for consumption within the geographical boundaries of the government installation subject to regulations by the commanding officer of such installation;

3. A copy of all such sales invoices and the applicable certificate both duly signed as required in "2" above, shall accompany the monthly report to substantiate any credit being sought, otherwise the wholesaler shall be liable for tax applicable to such products.

(5) Each Tennessee licensed wholesaler must include in his inventory merchandise in an amount equal only to that merchandise which was actually received. In such instances where a shipment received is less than the stated amounts on the invoice, an exception report from the common carrier shall be filed with the monthly report to substantiate any difference in actual receipt quantities and stated invoice quantities. Inventories may be adjusted accordingly contingent upon the wholesaler furnishing the department within ninety days from date of receipt of shipment evidence of payment for such shortage by the carrier or insurance company. Otherwise, the wholesaler shall be liable for tax applicable to total invoiced quantities.

Authority: *T.C.A. §§57-3-303, 57-3-307 and 67-1-102.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed June 4, 1974; effective July 4, 1974. Amendment filed November 2, 1978; effective January 1, 1979. Amendment filed August 31, 1979; effective October 15, 1979. Amendment filed January 29, 1985; effective April 16, 1985. Amendment filed June 27, 1990; effective August 11, 1990.*

1320-4-6-.03 BOND AND REPORTS REQUIRED.

(1) Bond of Wholesaler - Any wholesaler beginning business on or after July 1, 1970, shall be required to file with the Commissioner of Revenue a cash or surety bond with a solvent company qualified to do business in this state, in an amount no less than $75,000 for an initial period of four (4) months and at the end of such period, the bond shall be adjusted for the balance of the twelve (12) month period or until the following July 1, whichever occurs first, in an amount no less than one hundred ten percent (110%) of the average monthly tax liability incurred during the initial four (4) full months period engaged in business. If at July 1, following beginning of business any wholesaler shall have engaged in business for less than twelve (12) full months, he shall ascertain the amount of his renewal bond for the ensuing year by dividing his total tax liability incurred during such period by

(Rule 1320-4-6-.03, continued)

the number of months he has engaged in business to arrive at his monthly average tax liability. This amount shall then be multiplied by one hundred ten percent (110%) to arrive at the amount of bond to be posted for the ensuring year.

(2) Wholesaler Reports.

(a) Each wholesaler on or before the 15th day of each month shall file with the Tennessee Department of Revenue a recapitulation of all business transacted for the preceding month on forms prescribed by the department. Incomplete or altered returns shall be deemed to be delinquent and susceptible to statutory penalty the same as failure to make a return.

1. All returns, as required in (a) above, shall state amounts of all alcoholic beverages in terms of the metric system of capacity measurement as follows:

(i) 1.000 milliliters = 1 liter

2. All alcoholic beverages in containers having a capacity measured only in U.S. measure which are disposed of after the effective date of this rule shall be converted to metric capacity measurement for the purpose of reporting the disposition of such beverages to the Department of Revenue and paying tax thereon.

(i) In order to convert an amount of alcoholic beverages disposed of from U.S. capacity measure to metric capacity measure for the purpose of reporting such disposition to the Department of Revenue, the amount of alcoholic beverages requiring conversion which are disposed of during a reporting period shall first be converted to gallons and the resulting number of gallons, or portion thereof, shall then be multiplied by the conversion factor of 3.7854.

3. All alcoholic beverages in containers either having a capacity measured both in U.S. capacity measure and metric capacity measurement or having a capacity measured only in metric capacity measurement which are disposed of after the effective date of this rule shall be reported and taxed on the basis of the metric capacity measurement indicated on the container.

4. All amounts required to be entered on returns submitted to the Department of Revenue shall be computed to four (4) decimal places. The actual payment of the amount of tax shown to be due on the return, however, should be rounded to the nearest cent.

(b) Each wholesaler on or before the 15th day of each month shall file with the Tennessee Department of Revenue a report covering the sale of alcoholic beverages made by him during the preceding month and enclose payment of tax at the rate of l5¢ per case required by T.C.A. §57-6-201. For purpose of assessing the tax, a case is deemed as set out in rule 1320-4-6-.04 following. Incomplete or altered returns shall be deemed to be delinquent and susceptible to statutory penalty the same as failure to make a return.

(c) Each wholesaler shall also submit the reports required by rules 1320-3-.15(1) and 1320-3-.15(3).

Authority: *T.C.A. §§57-3-303, 57-3-307, and 67-1-102.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed November 2, 1978; effective January 1, 1979.*

1320-4-6-.04 WHOLESALE CASE TAX.

(Rule 1320-4-6-.04, continued)

(1) For the purpose of reporting and paying the tax set out at T.C.A. §57-706, the following amounts will constitute a case of alcoholic beverages:

(a) The following amounts constitute a case of distilled spirits:

1. Three (3) containers with a capacity of more than 64 ounces each but not exceeding 128 ounces each.

2. Six (6) containers with capacity of more than 32 ounces each but not exceeding 64 ounces each.

3. Twelve (12) containers with a capacity of more than 25.6 ounces each but not exceeding 32 ounces each.

4. Twelve (12) containers with a capacity of more than 16 ounces each but not exceeding 25.6 ounces each.

5. Twenty-four (24) containers with a capacity of more than 12.8 ounces each but not exceeding 16 ounces each.

6. Twenty-four (24) containers with a capacity of more than 8 ounces each but not exceeding 12.8 ounces each.

7. Forty-eight (48) containers each with a capacity of 8 ounces.

8. One hundred twenty (120) containers each with a capacity of 1.6 ounces or less.

9. Six (6) containers each with a capacity of 1.75 liters.

10. Twelve (12) containers each with a capacity of 1 liter.

11. Twelve (12) containers each with a capacity of 750 milliliters.

12. Twenty-four (24) containers each with a capacity of 500 milliliters.

13. Forty-eight (48) containers each with a capacity of 200 milliliters.

14. One hundred twenty (120) containers each with a capacity of 50 milliliters.

(b) The following amounts constitute a case of wine:

1. Four (4) containers with a capacity of more than 64 ounces each but not exceeding 128 ounces each.

2. Six (6) containers with a capacity of more than 32 ounces each but not exceeding 64 ounces each.

3. Twelve (12) containers with a capacity of more than 25.6 ounces each but not exceeding 32 ounces each.

4. Twelve (12) containers with a capacity of more than 16 ounces each but not exceeding 25.6 ounces each.

(Rule 1320-4-6-.04, continued)

5. Twenty-four (24) containers with a capacity of more than 12.8 ounces each but not exceeding 16 ounces each.

6. Twenty-four (24) containers with a capacity of more than 8 ounces each but not exceeding 12.8 ounces each.

7. Forty-eight (48) containers each with a capacity of 8 ounces or less.

8. Four (4) containers each with a capacity of 3 liters.

9. Six (6) containers each with a capacity of 1.5 liters.

10. Twelve (12) containers each with a capacity of I liter.

11. Twelve (12) containers each with a capacity of 750 milliliters.

12. Twenty-four (24) containers each with a capacity of 375 milliliters.

13. Forty-eight (48) containers each with a capacity of 187 milliliters.

14. Sixty (60) containers each with a capacity of 100 milliliters.

15. The number of any containers with a capacity of 2 liters or with a capacity of more than 3 liters necessary to equal 12 liters of wine.

(2) Cases will be determined on a fractional basis of the amounts specified above (for example, two-thirds (2/3) of a case of fifths with one-third (1/3) case of pints constitute a case or two-thirds (2/3) of a case of fifths with one-third (1/3) case of five hundred (500) milliliter containers constitute a case).

(3) Cases may be of assorted sizes and brands of alcoholic beverages. Distilled spirits and wine may not, however, he mixed in the same case.

Authority: *T.C.A. §§67-101, 57-132, and 57-136.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed November 2, 1978; effective January 1, 1979.*

1320-4-6-.05 DEFINITIONS-BRAND REGISTRATION.

(1) Unless otherwise provided, definitions of terms used in these rules shall be as set out at T.C.A. Section 57-3-101.

(2) Each and every distilled spirits or wine product bearing a distinct "brand name" or "trade name" shall be considered a separate "brand" for purposes of these regulations. Brand name or trade name shall mean:

(a) For domestic wine - the name of the bottler or packer required to appear on the container label by the regulations of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

(b) For imported wine - the name of the permittee who is the importer, agent, sole distributor, or other person responsible for the importation, whose name is required to appear on the container label by the regulations of the Bureau of Alcohol, Tobacco and Firearms. Department of the Treasury.

(Rule 1320-4-6-.05, continued)

(c) For distilled spirits bottled in the United States - the name or trademark of the product appearing on the container label.

(d) For imported distilled spirits not bottled in the United States - the name or trademark of the Product appearing on the container label.

(e) Within the group or line of wine or distilled spirits products bearing a distinct brand name or trade name as defined above, products which fall within separate classes and subclasses as defined in the standards of identity of the several classes of wine and distilled spirits promulgated by the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, shall be considered separate brands for purposes of these regulations. The separate brands for wine and distilled spirits shall be designated as follows:

1. For Wine -

(i) Grape Wine

(I) Table Wine

(II) Dessert Wine

(ii) Sparkling Grape Wine

(I) Champagne

(II) Champagne Style

(III) Crackling Wine

(iii) Carbonated Grape Wine

(iv) Citrus Wine

(I) Citrus Table Wine

(II) Citrus Dessert Wine

(III) Other Citrus Wine

(v) Fruit Wine

(I) Fruit or Berry Table Wine

(II) Fruit or Berry Dessert Wine

(III) Other Fruit Wine

(vi) Wine from other agricultural products

(I) Table Wine from other agricultural products

(II) Dessert Wine from other agricultural products

(Rule 1320-4-6-.05, continued)

(III) Raisin Wine

(IV) Sake

(V) Wine from miscellaneous other agricultural products

(vii) Aperitif wine

(I) Aperitif wine

(II) Vermouth

(viii) Imitation and substandard wine

(I) Imitation Wine

(II) Substandard Wine

(ix) Retsina Wine

2. For Distilled Spirits

(i) Neutral Spirits or Alcohol

(I) Vodka

(II) Grain Spirits

(ii) Whiskey

(I) Bourbon Whiskey

(II) Whiskey distilled from bourbon

(III) Light Whiskey

(IV) Blended Whiskey

(V) Blended Straight Whiskey

(VI) Spirit Whiskey

(VII) Scotch Whiskey

(VIII) Irish Whiskey

(IX) Canadian Whiskey

(iii) Gin

(iv) Brandy

(I) Fruit Brandy

(II) Cognac

(III) Dried Fruit Brandy

(IV) Lees Brandy

(V) Pomace Brandy

(VI) Residue Brandy

(VII) Neutral Brandy

(VIII) Substandard Brandy

(v) Blended Applejack

(vi) Rum

(vii) Tequila

(viii) Cordials and Liqueurs

(I) Sloe Gin

(II) Rye or Bourbon liqueurs

(III) Rock and rye or rock and bourbon or rock and brandy

(IV) Dry cordials or liqueurs

(ix) Flavored Distilled Spirits

(x) Imitations

(xi) Geographical Designations

(xii) Products without geographical designations but distinctive of a particular place

(f) A change in the size of a label or principal display panel or change in the designated fluid contents on containers with varying fluid capacity shall not constitute separate brands.

(g) A change in the wording on a label or panel designating alcoholic content shall no constitute a separate brand.

(h) A change in the wording label or panel on a container of wine designating; vintage year shall not constitute a separate brand.

(i) Any brands of distilled spirits, as listed in (2)(e)2.(ii) and the items under such subpart, may be further divided into additional brands if any products within a brand name possess, according to trade and consumer understanding, marketing images separate and distinct from other products within the brand name.

(Rule 1320-4-6-.05, continued)

(3) Importer - A person who brings, or causes to he brought, alcoholic beverages, manufactured in a foreign country, from a foreign country into the United States.

Authority: *T.C.A. §57-3-301.* ***Administrative History:*** *Original rule filed January 15, 1980; effective February 29, 1980.*

1320-4-6-.06 TAX ON INTRODUCTION OF BRANDS.

(1) Every domestic manufacturer and every importer of any brand of alcoholic beverage sold in this state shall, as a condition precedent to the introduction or sale of a brand of alcoholic beverage in this state, pay proper tax on all brands distributed by him in this state file all required documents with the Department of Revenue and meet all other requirements of these rules for registration of brands sold by him.

(2) The privilege tax year shall be from June 1 through May 31 each year. Payment of proper tax and filing of all required documents for registration shall be due May 1 of each year and shall be delinquent after May 31 each year.

(3) Every manufacturer or importer distributing brands of alcoholic beverages in this state as of May 22, 1979, shall, on or before 30 days after these rules become effective, pay the proper amount of brand registration tax to the Department of Revenue and properly register each brand distributed by them. Such initial registration and tax payment shall be effective for the privilege of distributing alcoholic beverages in this state during the privilege tax year of June 1, 1979 through May 31, 1980. The amount of this initial tax payment shall be based on the number of cases of each manufacturer's or importer's brand sold at wholesale in this state during the twelve (12) months immediately preceding June 1, 1979.

(4) After the initial tax payment and registration as set out in paragraph (3), each manufacturer or importer distributing registered brands in this state shall, on or before May 31 of any calendar year, register and pay the applicable amount of tax to the Department of Revenue for the privilege of distributing brands of alcoholic beverages in this state during the next subsequent privilege tax year. In addition to any other penalty provided by law, any manufacturer or importer deficient or delinquent in the payment of any tax on any brand for any tax year shall not be allowed to distribute in this state any brand(s) manufactured or imported by him until such deficiency or delinquency is paid.

(a) Manufacturers and importers distributing registered brands of alcoholic beverages in this state and desiring to cease such distribution shall, in order to avoid additional tax liability, remove, prior to September 1 of the succeeding tax year, to a point outside the state, all containers of such brand(s) held by licensed wholesale distributors in this state. If any containers of any brand(s) of alcoholic beverages are held by Tennessee licensed wholesalers on or after September 1 of any privilege tax year, the privilege of distribution of that brand in this state, upon which the tax is based, shall be deemed to have been exercised, and the tax shall be due. If a manufacturer or importer properly ceases to distribute his brand(s) of alcoholic beverages in this state by removing all containers of such brand(s) from Tennessee licensed wholesalers on or after September 1 of any privilege tax year,- no proportional refund of tax paid for the privilege of operating during such year shall be made.

(b) No licensed wholesale distributor in this state shall order, receive, accept or offer for sale any brand of alcoholic beverages in this state unless such brand has been properly registered and proper tax paid to June 1 of any year. Provided, however, any licensed wholesale distributor in this state selling a properly registered brand of alcoholic beverages, which the manufacturer or importer of such brand desires to discontinue in this state, may continue to sell, through June

(Rule 1320-4-6-.06, continued)

30 of the succeeding tax year, any containers of such brand in his possession as of June 1 of such year.

(c) Any containers of alcoholic beverages, on which tax has not been paid or which are not allowed to be distributed in this state because of a deficient or delinquent tax payment, not sold or removed from the state as provided above are contraband and shall be seized and sold by the Department of Revenue pursuant to the provisions of T.C.A. §§12-2-201 through 12-2-209. Applicable brand registration tax shall be added to the price of any such goods sold.

(5) Any manufacturer or importer desiring to introduce a brand(s) of alcoholic beverage in this state which has not previously been distributed in this state, shall register such brand(s) and pay tax of $250 for each brand to be registered. The $250 tax payment due on the initial introduction of a brand(s) in this state shall, however, be prorated on the basis of 1/12 of the tax amount for each month or portion thereof remaining in the privilege tax year subsequent to the date of registration.

(a) Any such manufacturer or importer paying a prorated tax amount on his initial registration of a brand(s) in this state shall, for his subsequent first full privilege tax year, pay tax based on the average monthly number of cases of his brand(s) sold at wholesale in this state during his initial partial privilege tax year times twelve (12).

(b) The proper amount of tax due from any manufacturer or importer for any privilege tax year subsequent to such manufacturer's or importer's first full privilege tax year shall be based on total wholesale sales of such person's brand(s) during the twelve (12) months immediately preceding the payment of tax.

Authority: *T.C.A. §§57-3-301 and 67-1-102.* ***Administrative History:*** *Original rule filed January 15, 1980; effective February 29, 1980. Amendment filed October 19, 1987; effective December 3, 1987.*

1320-4-6-.07 REGISTRATION AND TRANSFER OF BRANDS.

(1) In addition to paying applicable tax due each year, any manufacturer or importer distributing brands of alcoholic beverages in this state shall file with the Department of Revenue the following:

(a) Copies of all written contracts or renewal agreements with Tennessee wholesalers making sales of brands of alcoholic beverages distributed in this state by such manufacturer or importer.

(b) Any report or other forms required by the Commissioner of Revenue.

(c) A copy of the label from each brand of alcoholic beverages distributed in this state and copies of the approved ATF-Form 1649 of the Bureau of Alcohol, Tobacco and Firearms. Copies of the labels or forms need not be filed each year but shall be filed upon initial registration of such brand and at any time any change is made in such label or an additional filing is made.

(2) If any manufacturer or importer fails to register or registers improperly any brand, the Department of Revenue shall notify the manufacturer or importer to cease distribution in this state until such brand(s) is registered properly and also shall notify the Alcoholic Beverage Commission to suspend any permit issued to any such manufacturer or importer pursuant to the provisions of T.C.A. §57-3-601 et seq. until such brand is registered properly. The following goods are contraband and shall be seized and sold by the Department of Revenue pursuant to the provisions of T.C.A. §§12-2-201 through 12-2-209 with applicable brand registration tax added to the price of any such goods sold:

(Rule 1320-4-6-.07, continued)

(a) Any products located in this state of any manufacturer or importer who fails to register or registers improperly any brand(s) that are not disposed of within 30 days of the date of notification as provided above.

(b) Any products of any manufacturer or importer who fails to register or registers improperly any brand(s) that are shipped into this state after the date of notification as provided above.

(3) No manufacturer or importer or any successor to a manufacturer or importer shall be permitted to transfer a brand from one wholesale distributor to another or to terminate a contract prior to the expiration of its term without the written approval of the Commissioner. Requests for approval of a transfer or termination must be submitted in writing, and a copy of said request must at the same time be sent to the wholesale distributor in whose name the brand is then registered.

(a) Upon receipt from a manufacturer or importer or successor of a request to terminate a contract or to transfer a brand, the Department shall notify the requesting party and the wholesale distributor in whose name the brand is then registered that the parties have thirty (30) days from the date of receipt of the letter in which to cure any deficiencies. The brand shall remain in status quo during the thirty day period. If the manufacturer or importer or successor wishes to pursue its request for a termination or transfer at the end of the thirty-day period, it must notify the Department in writing that it wishes to proceed with the termination or transfer request.

(b) Upon receipt of the request to proceed, the Commissioner will make a preliminary determination as to whether sufficient evidence has been offered to establish a prima facie case of good cause, asserted in good faith, to terminate the contract or to transfer the brand.

1. Upon the Commissioner's preliminary determination either to approve or disapprove the contract termination or brand transfer, the Department shall so notify the manufacturer or importer or successor, the wholesaler in whose name the brand is then registered, and all other affected parties by letter. The parties shall then have an opportunity to request a hearing before the Department’s decision to approve the determination or transfer becomes final. The parties shall have ten (10) days from the date of receiving notice in which to request a hearing.

2. (i) If a hearing is requested and held, the termination of contract or transfer of brand will not take effect unless and until a determination is made by the hearing officer to approve the termination or transfer.

(ii) If determination is made by the hearing officer to disapprove the termination or transfer, the brand shall remain in status quo. Thereafter, failure on the part of any manufacturer or importer or successor to ship his wholesale distributor a reasonable amount of the brand sought to be terminated or transferred will be grounds for a revocation of that manufacturer’s or importer’s or successor’s nonresident seller’s permit or winery license.

(iii) Absent a request for a hearing, the Commissioner's preliminary determination concerning the termination of the contract or the transfer of the brand will become final and will take effect when the ten (10) day period has elapsed.

(c) Approval for a termination of contract or a transfer of brand shall be given by the Commissioner only if it is found by him that the termination or transfer is being proposed in good faith and for good cause and for no other reason.

(Rule 1320-4-6-.07, continued)

1. "Good cause" means:

   (i) Failure by a wholesale distributor to comply substantially with the requirements imposed or sought to be imposed upon him by the manufacturer, importer or successor, which requirements are not discriminatory as compared with the requirements imposed on other similarly situated wholesale distributors either by their terms or in the manner of their enforcement, and which requirements are not in violation of any law or regulation;

   (ii) The failure by the wholesale distributor to act in good faith and in a commercially reasonable manner in carrying out the terms of the contract;

   (iii) Voluntary abandonment of the contract;

   (iv) Conviction of the wholesale distributor in a court of competent jurisdiction of an offense punishable by a term of imprisonment in excess of one (1) year;

   (v) Any act by a wholesale distributor which substantially impairs the manufacturer's importers or successor's trademark or trade name;

   (vi) The institution of insolvency or bankruptcy proceedings by or against a wholesale distributor, or any assignment or attempted assignment by a wholesale distributor of the contract or the assets of the distributorship for the benefit of creditors;

   (vii) Failure of the wholesale distributor to pay to the manufacturer, importer or successor within thirty (30) days after receipt of notice any uncontested sums past due the manufacturer, importer or successor and relating to the contract; or

   (viii) Failure of the wholesale distributor to comply with federal, state or local law or regulations applicable and material to the operation of the distributorship, which could reasonably impair the wholesaler distributor's continued future performance.

2. "Good faith" means honesty in fact in the conduct or transaction concerned.

Authority: *T.C.A. §§47-25-1503, 57-3-301, 67-1-102, 67-1-107; Opinion of the Attorney General No. 90-65.* ***Administrative History:*** *Original rule filed January 15, 1980; effective February 29, 1980. Amendment filed October 19, 1987; effective December 3, 1987. Amendment filed October 16, 1990; effective November 30, 1990.*